

1 Honor, to show that no application has been filed for
2 modification or for any other change.

3 JUDGE SIPPEL: Is there any objection to that?

4 MR. BROWN: I don't understand this document, Your
5 Honor, what she is trying to say.

6 MS. LADEN: I'm trying to indicate by this
7 document, Your Honor, that the Commission's records do not
8 show the receipt of any application for modification. This
9 corroborates Mr. Brown's statement that no application has
10 been filed.

11 JUDGE SIPPEL: Yeah. It's just a way of showing
12 from the--it's difficult sometimes to prove a negative, but
13 the negative can be shown if you show business documents
14 from a business or from an agency in which something such
15 as, important as filing an application would appear. The
16 fact that it hasn't appeared leads to the conclusion that
17 well, one was never filed. As she says, Ms. Laden says,
18 this is a point you're really not contesting anyway.

19 MR. BROWN: No, sir.

20 JUDGE SIPPEL: So then do you have any objection?

21 MR. BROWN: No, sir. I have no objection on that.

22 JUDGE SIPPEL: Exhibit 17 is received.



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1 (MMB Exhibit No. 17
2 was received into
3 evidence.)

4 MS. LADEN: Your Honor, I would like to have
5 marked for identification as Mass Media 18 a one-page
6 document entitled in the matter of review of the technical
7 assignment criteria for the AM broadcast service.

8 JUDGE SIPPEL: The report that's released on March
9 the 29th?

10 MS. LADEN: March 29, 1990.

11 JUDGE SIPPEL: It is FCC 90-112. The reporter
12 will mark that for identification as Bureau's Exhibit No.
13 18.

14 (MMB Exhibit No. 18
15 was marked for
16 identification.)

17 BY MS. LADEN:

18 Q. Mr. Brown, if you would look at Mass Media Bureau
19 Exhibit 18? Let me know when you're finished.

20 MR. BROWN: I'm looking at it, Ms. Laden.

21 (The witness reviewed the document.)

22 MR. BROWN: Ready.



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1 JUDGE SIPPEL: Ms. Laden?

2 BY MS. LADEN:

3 Q. Yes. Mr. Brown, if you would look at Mass Media
4 Bureau Exhibit 18, that is the Commission's order placing
5 the AM, the freeze on filing of AM applications, is it not?

6 A. Yes, ma'am.

7 Q. If you look at exhibit--at paragraph 3?

8 A. Yes, ma'am. I see it.

9 Q. Isn't it a fact there are certain categories of
10 applications that they will accept even under the freeze?

11 A. I believe this to be true.

12 Q. And at subparagraph (3), do you see that they will
13 accept applications for minor changes necessitated by costs
14 beyond the control of the applicants?

15 A. Yes, I see that.

16 Q. "e.g., unavoidable loss of a transmitter site or
17 compliance with FAA regulations"?

18 A. I see that.

19 Q. Would WKIJ have been able to file an application
20 for a minor modification for an unavoidable loss of a
21 transmitter site?

22 A. We could have, but under the circumstances, what



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1 we had to move to, we couldn't move--it wouldn't have been a
2 minor change. It got into the major change because we had
3 to do the power increase, and that brought on the major
4 change.

5 That's what they told me, that it would be a major
6 change, and I would have to file a, I believe a \$2,000 fee
7 with the change.

8 Q. Did you have to increase the power?

9 A. To where we moved to, yes, ma'am, to have the one
10 millivolt coverage of the City of Parrish, yes, ma'am.

11 Q. Isn't it a fact that you wanted to increase the
12 power to make the station more marketable?

13 A. That's true, yes, ma'am.

14 Q. May I direct your attention to Mass Media Bureau
15 Exhibit 1, which is already in the record?

16 JUDGE SIPPEL: Let's--before we do that, let's
17 rule on Exhibit 18.

18 Do you have any objection to its receipt into
19 evidence?

20 MR. BROWN: No, sir.

21 MS. LADEN: I hadn't offered it, but I will offer
22 it.



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1 JUDGE SIPPEL: Okay. It's received in evidence as
2 Bureau Exhibit No. 18.

3 (MMB Exhibit No. 18
4 was received into
5 evidence.)

6 MS. LADEN: Okay. In view of that, Your Honor,
7 just to finish that section about the AM freeze, I would
8 like to approach the bench with another exhibit.

9 JUDGE SIPPEL: Yes, you may. Thank you.

10 MS. LADEN: Your Honor, I would like to have this
11 exhibit marked for identification as Mass Media Bureau
12 Exhibit 19.

13 JUDGE SIPPEL: All right. This is a two-page
14 document from the Federal Register, Monday, April 6, 1992,
15 Volume 57, No. 66 at page 11614 and 11615. It's identified
16 as, marked for identification as the Bureau Exhibit No. 19?

17 MS. LADEN: Yes, Your Honor. This exhibit, which
18 is a two-page exhibit, from the Federal Register announces
19 the end of the AM application freeze about which there has
20 been some discussion this morning.

21 The announcement is dated March 27, 1992. The
22 publication in the Federal Register is April 6, 1992.



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1 JUDGE SIPPEL: Very well.

2 (MMB Exhibit No. 19

3 was marked for

4 identification.)

5 BY MS. LADEN:

6 Q. Now Mr. Brown, this exhibit indicates that the AM
7 freeze was lifted on March 27, 1992.

8 At that time, did you have an application ready to
9 be filed?

10 A. No, ma'am. It was lifted when?

11 MS. LADEN: According to this document, Your
12 Honor, the Commission's order was dated March 27, 1992. It
13 was published in the Federal Register April 6, 1992.

14 JUDGE SIPPEL: I see the date March 27, 1992 under
15 the heading Federal Communications Commission ends AM
16 application freeze.

17 MR. BROWN: But it also goes, Your Honor, on down,
18 that the Federal Communications Commission will end the
19 current freeze on filing applications for new AM
20 construction permits and modification of the existing
21 facilities at midnight on April 19th, 1992, and that was
22 after this revocation hearing was started.



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1 JUDGE SIPPEL: Well, those records, those dates
2 are going to speak for themselves. It's just a simple
3 matter of construction and interpretation.

4 BY MS. LADEN:

5 Q. Mr. Brown, did you have on April 19, 1992, an
6 application ready to be filed?

7 A. No, ma'am.

8 Q. Do you have one now?

9 A. I could have one within a week.

10 Q. Do you know that your application would not be
11 accepted for filing because of this hearing?

12 A. Well, may I expound on that, Your Honor?

13 JUDGE SIPPEL: Well, you can answer the question.
14 Can you answer the question yes or no? And then you can
15 respond to it.

16 THE WITNESS: Could you repeat the question,
17 please, ma'am?

18 BY MS. LADEN:

19 Q. Do you know that your application would not be
20 accepted because of the pendency of this hearing?

21 A. No.

22 Q. Did you ever ask for a waiver of the AM freeze to



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1 file your application?

2 A. Yes, ma'am.

3 Q. And it was denied on granted or--

4 A. There was a--we were granted permission to do the
5 test, but as far as filing application, no.

6 Q. Did you ever request a waiver for the purpose of
7 filing an application?

8 A. No, because in talking with the engineers at the
9 Commission, they would not accept it.

10 Q. Okay. Now if you would look at Mass Media Bureau
11 Exhibit 1?

12 A. Yes, ma'am.

13 JUDGE SIPPEL: Again, I'm not sure--are you going
14 to sponsor this or move it in? But I'm prepared to receive
15 Exhibit 19.

16 MS. LADEN: You're correct, Your Honor. I should
17 have offered into evidence, I would like to offer Mass Media
18 Bureau Exhibit 19.

19 JUDGE SIPPEL: Any objection?

20 MR. BROWN: No, sir.

21 JUDGE SIPPEL: It's received in evidence, Bureau
22 exhibit No. 19.



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1 (MMB Exhibit No. 19

2 was received into

3 evidence.)

4 JUDGE SIPPEL: Now you're referring him to the
5 Bureau's Exhibit 1?

6 MS. LADEN: That's correct, Your Honor.

7 JUDGE SIPPEL: Mr. Brown, do you have that before
8 you?

9 MR. BROWN: Yes, I do.

10 BY MS. LADEN:

11 Q. Now isn't it a fact that, that in that letter, you
12 indicate to the Commission that WKIJ AM went silent on June
13 24, 1990?

14 A. Yes, ma'am.

15 Q. And the station has been silent since then?

16 A. Yes, ma'am.

17 Q. And no application has been filed for a
18 modification or a change of site or anything else since
19 then?

20 A. No, ma'am; application, no.

21 Q. Now in the first paragraph, in the first sentence
22 of this letter, Mass Media Bureau Exhibit 1--



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1 A. Yes.

2 Q. Isn't it a fact that you asked for authority to
3 remain silent to restructure your finances and/or sell WKIJ?

4 A. Yes, ma'am, I was.

5 Q. So at that time, you were not pursuing the
6 technical changes?

7 A. No, ma'am.

8 Q. When did you begin to pursue the technical changes
9 for the station?

10 A. I would have to look to some of the things to see.
11 I don't, I don't know right offhand. I don't know that
12 answer. We would have to go back and look through the
13 records to find the date.

14 Q. Okay. If you would look at Mass Media Bureau
15 Exhibit 2, which is the response to that letter of yours of
16 June 25, 1990, if you would read that to yourself, please.

17 A. This was reference--you want me to read it out
18 loud?

19 Q. No. If you would read it to yourself, please?
20 (The witness reviewed the document.)

21 MR. BROWN: Okay.

22 BY MS. LADEN:



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1 Q. Now in the last two sentences, isn't it a fact
2 that the Commission says here station should file assignment
3 application prior to expiration of this authority? Isn't
4 that correct?

5 A. Yes, ma'am, that's what it says.

6 Q. And this authority is granted through October 9,
7 1990?

8 A. Yes, ma'am.

9 Q. Did you ever file an assignment application prior
10 to October 9, 1990?

11 A. I don't know that I filed--I filed something, but
12 I don't know where it was specifically asked to remain
13 silent because I undoubtedly overlooked that, and talking
14 about the technical information, that we started, I wasn't,
15 I didn't comprehend that and put it--I didn't specifically
16 put it in the request, the next request that I did to, to do
17 that, but I believe, I believe it was extended.

18 Q. Yes, it was, but I think the record will also
19 reflect as is shown in Mass Media Bureau Exhibit 17 that no
20 assignment application was filed, and in fact nothing has
21 been filed since this date, isn't that correct?

22 I'm not talking about letters. I'm talking about



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1 applications.

2 A. No, ma'am, not application. The last, the last
3 communication that I had was August 16th, which we asked
4 for, which we asked for an extension.

5 Q. Now that letter is a Mass Media Bureau exhibit,
6 is it not?

7 A. Yes, ma'am.

8 Q. Where does it talk about an extension of time to
9 remain silent?

10 A. It don't.

11 Q. Does it indicate in this letter anywhere that the
12 station is silent?

13 A. No, ma'am.

14 Q. Now is it your understanding that the request for
15 a field test authorization requires the station to be silent
16 or has anything do with the station being silent?

17 A. No, ma'am, it don't, other than the fact that we
18 had moved the transmitter out of the allowed range.

19 Q. Now isn't it a fact, I mean isn't your
20 understanding of a field test authorization permission to do
21 tests?

22 A. Yes, ma'am.



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1 Q. The station doesn't have to be licensed? It
2 doesn't have to be a station, isn't that a fact?

3 A. That's true.

4 Q. In fact it has nothing to do with the license
5 authorization for the station, does it?

6 A. No. I don't think so.

7 Q. Okay. If you would look at Mass Media Bureau
8 Exhibit 3, this is your letter to the Commission?

9 A. Yes, ma'am.

10 Q. Isn't it a fact that you state at the very end the
11 last two sentences--

12 A. Yes, ma'am.

13 Q. "A request to waiver the freeze on the AM band
14 will also be filed with the Commission. The request should
15 be completed and filed by 15 October 1990"?

16 A. That's what it says.

17 Q. What are you talking about a waiver? So that you
18 can file an application for a modification?

19 A. I believe, I believe that was correct.

20 Q. Did you ever ask for such a waiver?

21 A. I don't, I don't, I don't remember. I may have
22 asked for a something, but I don't know whether specific to



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1 request a waiver other than this right here.

2 Q. Now if you would look at Mass Media Bureau Exhibit
3 4, which is the Commission's response to that letter that we
4 were just looking at?

5 A. Yes, ma'am.

6 Q. Did you receive this letter?

7 A. I may have. I don't, I don't remember this
8 particular letter, but I may have received it, yes, ma'am.

9 Q. Is the address that is shown for you there
10 correct?

11 A. Yes, ma'am. That's what I was using at that time.
12 I probably put that down.

13 Q. Would you look at Mass Media Bureau Exhibit 12,
14 please?

15 JUDGE SIPPEL: This is your Request for
16 Admissions?

17 MS. LADEN: Yes, Your Honor.

18 JUDGE SIPPEL: Do you want to direct him to a
19 particular point?

20 MS. LADEN: I am looking for it, Your Honor.

21 JUDGE SIPPEL: Okay.

22 MS. LADEN: No, it's not here.



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1 BY MS. LADEN:

2 Q. You don't have a recollection as to whether you
3 specifically received this document?

4 A. I don't remember receiving it, but I did have that
5 document.

6 Q. Oh, you do have it? You have seen it?

7 A. Yes, ma'am, I do have it. I found that document
8 last night, as a matter of fact.

9 Q. Now you see that it grants WKIJ temporary
10 authority to remain silent through January 21, 1991?

11 A. Just a minute. Yes, ma'am. I see that.

12 Q. To locate a qualified buyer and relocate tower on
13 your own property?

14 A. Yes, ma'am.

15 Q. And then it says FCC Form 301 must be filed for
16 relocation of tower and increase of power, and then it says
17 any further request for extension must be accompanied by
18 report of progress toward resumption of operation?

19 A. Yes, ma'am, I see that.

20 Q. And this is, isn't that the last communication you
21 received from the Commission regarding authority to remain
22 silent?



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1 A. I believe it is.

2 Q. Now what did that mean to you when it said you had
3 authority to remain silent through January 21, 1991?

4 A. Well, to tell you the truth, I don't remember it.
5 I don't remember getting this letter. I have it, but I
6 don't remember getting it or I would have--I don't remember
7 why I didn't respond to it. That's a mistake, oversight on
8 my part. I don't know, but I could have. I didn't is the
9 only thing I know.

10 Q. Okay. You were, you were testifying earlier that
11 your application for a modification was nearly complete, and
12 in connection with that, I would direct you to Mass Media
13 Bureau Exhibit 6, which is your letter to the Commission
14 dated April 25, 1991.

15 You asked for request to conduct more field
16 strength measurements?

17 A. Yes, ma'am.

18 Q. Would you read the last sentence of that letter
19 out loud, please?

20 A. "We believe that if we can get a few days of good
21 dry weather conditions these test can be concluded and a
22 application filed within 90 days."



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1 Q. Now you're talking about an application for a
2 modification?

3 A. Yes, ma'am.

4 Q. Did you file the application within 90 days?

5 A. No, ma'am.

6 Q. Any reason?

7 A. At this time, I don't know. I don't, I don't have
8 a reason at this time.

9 Q. Now if you look at the next exhibit, Mass Media
10 Bureau Exhibit 7?

11 A. Um-hum.

12 Q. That is a letter from the Commission to you
13 responding to that letter we were just talking about?

14 A. Yes, ma'am.

15 Q. Now this has to do with field test authorization,
16 not with silence?

17 A. Yes, ma'am.

18 Q. It refers to your letter of April 25, 1991?

19 A. A-huh.

20 Q. Would you read the last sentence of that letter,
21 please?

22 A. "You are cautioned to more closely observe the



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1 expiration dates of temporary authorizations."

2 Q. Now when you saw that, did that mean anything to
3 you?

4 A. It meant--yes, ma'am. It meant that I needed to,
5 to get them in on time.

6 Q. Now Mass Media Bureau Exhibit 8, which we have
7 talked about before, is a letter that you sent on August 16,
8 1991?

9 A. Yes, ma'am.

10 Q. You have testified today that you did not receive
11 Mass Media Bureau Exhibit 9, which is the Commission's
12 response to that letter?

13 A. Yes, ma'am.

14 Q. So as far as you were concerned, there was no
15 response to that letter of August 16, 1991?

16 A. That's correct.

17 Q. Did you call and inquire as to why you had not
18 received a response?

19 A. No, ma'am, but I had, I had--I kept asking the
20 wife if we were getting it, but also I assumed again that
21 due to the freeze, we were good until the freeze was over.

22 Q. Now if you look at Mass Media Bureau Exhibit 18,



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1 which is the order imposing the freeze, that order was
2 released March 29, 1990, was it not?

3 A. That's what it says, yes, ma'am.

4 Q. Now would you look at Mass Media Bureau Exhibit 4?

5 A. Yes, ma'am.

6 Q. That letter was written to you by the Commission
7 October 30, 1990, correct?

8 A. Yes.

9 Q. After the freeze?

10 A. No, ma'am. The freeze hadn't taken place at this
11 time. I mean the freeze hadn't been lifted at this time.
12 We were still in a freeze at this time.

13 Q. That is my question. This letter was written
14 during the freeze?

15 A. Yes, ma'am.

16 Q. And does it not grant temporary authority to
17 remain silent through January 21, 1991?

18 A. Yes, ma'am, it does.

19 Q. It doesn't mention anything about the freeze?

20 A. No, ma'am.

21 Q. It gives a date?

22 A. Yes, ma'am.



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1 Q. Now could you turn to your exhibits, please, to
2 your Exhibit 1 at page 8?

3 Do you have that?

4 A. Yes, ma'am.

5 Q. Now you see there are some notes on that envelope?

6 A. Yes, ma'am.

7 Q. Do you see a note that says, "freeze off on AM"?

8 A. Yes, ma'am.

9 Q. Is that your handwriting?

10 A. Yes, ma'am.

11 Q. So it's safe to assume that at some point, you
12 knew that the freeze on the AM had been lifted or was about
13 to be lifted?

14 A. These notes were made sometime in talking either
15 with you or the day, the one day after this revocation
16 started. I jotted that note down.

17 Q. Did you ever file an application?

18 A. No, ma'am.

19 Q. Did you ever ask whether your application would be
20 processed?

21 A. I did ask. I have talked to Mr. Burtle, James
22 Burtle, and from him, he was not too enthused about me



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1 filing an application while this revocation was going on.

2 Q. Did he tell you you couldn't file one?

3 A. No. He didn't say I couldn't. He just didn't
4 really, from his attitude, he didn't think it was worth my
5 time. He kind of had a, you know, he kind of had an
6 attitude about me talking to him about it, and he didn't
7 tell me much other than he would--I asked him to talk to
8 you, and he said he would, but he didn't seem to think that
9 an application would be accepted at that time, or you would
10 do anything with it if you accepted it, and somewhere I read
11 that if you sent an application in with the fee, the fee was
12 not refundable if they returned the application, and that's
13 the reason.

14 Q. Did you think that the station was silent with
15 authority?

16 A. Yes, ma'am, I sure did.

17 Q. What made you think that you had the authority?

18 A. Well, in dealing with everybody in 1991, all the
19 communications we had, I never received anything saying we
20 wouldn't, other than this letter you showed over here, that
21 we were authorized up until January the 21st.

22 Q. But you didn't get any notification?



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1 A. No, ma'am, I sure didn't.

2 Q. Did you ask?

3 A. No, ma'am. I assumed that the letters that we
4 were writing, if we had of been, that they would have said
5 something to me. They would have sent me a letter. They
6 would have told me that you're off without authority. You
7 need to do something, and I never received any of that kind
8 of information.

9 MS. LADEN: Your Honor, may I approach?

10 JUDGE SIPPEL: Yes.

11 MS. LADEN: I would like to have marked for
12 identification as Mass Media Bureau Exhibit 20--I think it's
13 20.

14 JUDGE SIPPEL: Let me check. Yes, it would be 20;
15 20 would be the next one.

16 MS. LADEN: This is a one-page document which
17 shows two pages of the FCC rule book, the version that I
18 have.

19 In any event, it shows Section 73.1740 of the
20 Commission's rules, among others.

21 MR. BROWN: I see that.

22 (MMB Exhibit No. 20)



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1 was marked for
2 identification.)

3 BY MS. LADEN:

4 Q. Now if you look, Mr. Brown, at Section 73.1740 of
5 the Commission's rules, minimum operating schedule, and I
6 wonder if you would read paragraph (4)? I think it's
7 subsection (A) paragraph (4).

8 Can you locate that?

9 A. What? Paragraph what?

10 Q. It's subsection (A), paragraph 4. It's on the
11 right-hand side of this page.

12 A. Paragraph (4).

13 Q. It begins in the event that causes beyond the
14 control?

15 A. Okay.

16 Q. Could you read that to yourself, please?

17 (The witness reviewed the document.)

18 MR. BROWN: I have read it.

19 BY MS. LADEN:

20 Q. What does that mean to you, that section? What do
21 you think that is required under that rule?

22 A. Well, just what it says.



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1 Q. And what it says is that if the station is silent
2 for longer than 30 days, a request for authority must be
3 filed with the Commission, isn't that right?

4 A. Yes, ma'am.

5 Q. Now does it indicate that the Commission should
6 notify the licensee that the licensee is silent without
7 authority?

8 A. No, ma'am, it don't.

9 Q. Isn't it a fact that it requires the licensee to
10 request the authority to remain silent?

11 A. It does.

12 MS. LADEN: Your Honor, I would like to introduce
13 Mass Media Bureau Exhibit 20 into the record. As I
14 indicated, it's a copy of the Commission's rules.

15 JUDGE SIPPEL: Let's have it marked for
16 identification as you have described it, as Mass Media
17 Bureau Exhibit No. 20.

18 Is there any objection to receiving it into
19 evidence?

20 MR. BROWN: No, sir.

21 JUDGE SIPPEL: It's received in evidence as
22 Bureau's Exhibit 20.



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1 (MMB Exhibit No. 20

2 was received into

3 evidence.)

4 MS. LADEN: Your Honor, I would like to have
5 marked for identification Mass Media Bureau Exhibit 21, and
6 this is--

7 JUDGE SIPPEL: This is what? An excerpts?

8 MS. LADEN: This is an excerpt of the Commission's
9 rules, specifically Section 1.5, and other sections as well.

10 JUDGE SIPPEL: The reporter will mark that for
11 identification as the Bureau's Exhibit 21.

12 (MMB Exhibit No. 21

13 was marked for

14 identification.)

15 BY MS. LADEN:

16 Q. Mr. Brown, if you could look at Bureau Exhibit 21,
17 the Section 1.5?

18 A. I see it.

19 Q. Could you read that to yourself, please?

20 (The witness reviewed the document.)

21 JUDGE SIPPEL: Tell us when you're ready.

22 THE WITNESS: Ready.



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